

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 18,170  
 )  
Appeal of )

# INTRODUCTION

The petitioner appeals the decision by the Department of Aging and Disabilities (DAD) substantiating a report of abuse by the petitioner of a mentally disabled individual.

## FINDINGS OF FACT

1. The petitioner has been an employee of a community mental health program for nine years. He is trained to work as a support person for developmentally disabled adults. In addition to on-the-job and peer training, the petitioner has an associate's degree and is working towards a bachelor's degree in psychology.

2. As part of the petitioner's duties he had, at one time, been the support person for N.R., a twenty-two-year-old man with severe paranoia and a schizoaffective disorder. He began working with N.R. when he was seventeen. The petitioner described N.R. as a smart manipulator and possible sex offender who was prone to explosive behavior. He was involved with him during two different stints but had not worked with

him for at least eighteen months. He occasionally saw N.R. after his official duties ended and noted that N.R. continued to seek his approval for his activities.

3. In August of 2002, N.R. was being supported by another employee, M.C., who had been working with him for some eighteen months. At that time N.R. was in the "crisis unit" which means that he had been moved from independent living to a supervised situation in a facility run by the mental health organization.

4. On August 13, 2002, N.R. and his support person M.C. went to a county mental health building to pick up some cans for recycling. In the hallway of the building they encountered the petitioner. M.C., who was standing next to N.R., reported that N.R. said hello to the petitioner. The petitioner, according to M.C., looked straight at N.R. and said "N., are you still in "crisis"? N. responded yes and the petitioner said "You're manipulating the agency into 24 hour care." N.R. did not reply but just stood there grinning. M.C. heard the petitioner say "You mother fucker, if you were still under P.P. and me you would be labeled a sex offender and a risk assessment would be done for you to go to the [list of mental health buildings] and even to the bathroom."

5. M.C. was surprised when this happened and sent N.R. upstairs to get the recycling cans. He was shocked and did not know what to say to the petitioner so he made some small talk to change the subject. He felt that the petitioner's statements intimidated and scared N.R. He noted that N.R. was upset, shaking and sputtering and could not stop talking about the incident for the rest of the day. At one point, he hid from M.C. M.C. had a difficult time calming him down. Although he considers himself a friend of the petitioner and has known him for years, he reported the incident to N.R.'s case manager. He did so because he felt it was inappropriate for the petitioner to swear at the client, to label him a "sex offender" and to threaten him with a "risk assessment".

6. The case manager reported these events to DAD and the petitioner was fired from his job. An investigation was made into the matter by interviewing N.R., the petitioner, M.C. and two supervisors. N.R. was found by DAD to be a vulnerable mentally ill adult who was verbally abused by the petitioner because: (1) he used a profanity towards him and (2) made an offensive statement about his status and what actions he would take if still working with him, which (3) was intimidating and hurtful and caused N.R. to become upset.

7. The petitioner's version of events only varies slightly from that of M.C. He agrees that he asked N.R. about being in the crisis unit but says that N.R. responded that he had begun to live in a supervised home. He does recall accusing him of manipulating his way into twenty-four hour care. He denies calling him a "mother-fucker" and says that he may have said something like "What the fuck were you thinking about getting into the crisis bed?" He remembers adding "If you were still with me and [names of other staff members] we would treat you like the sex-offender you do not want to be." He agrees that he said he would write N.R. up for a risk assessment to go to the bathroom. While the petitioner agrees that even his version of the events might have seemed an inappropriate use of words, he believes such communication is necessary for its "shock value" in order to control the situation with a manipulative person. He said that he only spoke with N.R. because he cared about him and his caring has cost him his job.

8. The petitioner stated that he did run into M.C. later in the day who told him that N.R. was hiding. He said he realized N.R. was "stewing" about what he had said to him that day. He said he had planned to talk with N.R. later but

never got the chance to do so because he was discharged from his employment two days after the event.

9. While he admits that he is friendly with M.C. and even went to his wedding, he thinks M.C.'s wife, who is a director of one, the mental health programs, does not like him and may have prompted M.C. to exaggerate the event. He pointed out that this was the only negative thing that had happened in nine years of successful service in his career.

10. The petitioner was supported in this latter claim by a supervisor who had known him for five years. He did not think that either witness had a motive for not telling the truth as they saw it. He believed that the situation might have been exaggerated but also agrees that he did not witness the event. He explained that the petitioner "gets passionate" about his work. He agrees with the petitioner that sometimes it is necessary for a support person to use a direct "hard shock" to get the attention of some of the more manipulative and difficult clients, although he would draw the line at ever using an expletive to a client.

11. The petitioner was also supported by a teacher from the local high school who had seen the petitioner work effectively and "beautifully" with some of her students. She

had never heard him call anyone a name but admits she had never seen him work with N.R.

12. The hearing officer finds that the testimony of M.C. with regard to the words said and their impact upon the vulnerable adult on the day in question is credible. He was clear about the expletive used and its shock value to him. The petitioner's recollection of the actual words he said to N.R. is less clear and his testimony in this regard is found to be not credible.

ORDER

The decision of DAD substantiating the abuse is affirmed.

REASONS

The Commissioner of the Department of Aging and Disabilities is required by statute to investigate reports regarding the abuse of disabled adults and to keep those reports that are substantiated in a registry under the name of the person who committed the abuse. 33 V.S.A. § 6906, 6911(b). Persons who are found to have committed abuse may apply to the Human Services Board pursuant to 33 V.S.A. § 6906(d) for relief on the grounds that the report in question is "unsubstantiated".

The statute defines "disabled adult" as a person eighteen years of age or older, who has a diagnosed physical or mental impairment." 33 V.S.A. § 6902(5). Abuse is defined, in pertinent part, as:

(1) "Abuse" means:

- (A) Any treatment of an elderly or disabled adult which places life, health or welfare in jeopardy or which is likely to result in impairment of health;
- (B) Any conduct committed with an intent or reckless disregard that such conduct is likely to cause unnecessary harm, unnecessary pain, or unnecessary suffering to an elderly or disabled adult;

. . . .

The petitioner took it upon himself to use language and adopt a demeanor toward a person known to him as a mentally vulnerable young adult which was demeaning, insulting and threatening. Although the petitioner has argued that some of the language he used was therapeutically appropriate, the facts show that the petitioner was not even involved in the disabled adult's care at the time the statements were made. The statements appear to have been completely unprovoked and gratuitously offered. The effect on the mentally ill adult was swift and noticeable. He was humiliated and upset to such an extent that he went into hiding for part of the day.

These facts meet the definition of abuse found in the above statute in that the petitioner treated a mentally vulnerable adult in such a way as to cause him unnecessary harm, pain and suffering as well as placing his mental health and welfare in jeopardy. As the petitioner has failed to meet his burden of showing that his name should not be placed into the registry, DAD's decision to so place it should be upheld. 33 V.S.A. § 6911(e).

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